

DECISION AND ORDER

Decision Issue Date Thursday, May 30, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ABIOLA NOSIRU, CITY OF TORONTO

Applicant: MICHAEL FLYNN

Property Address/Description: 1745 ALBION RD

Committee of Adjustment Case File: 18 222102 WET 01 MV

TLAB Case File Number: 18 255818 S45 01 TLAB

DECISION DELIVERED BY S. GOPIKRISHNA

INTRODUCTION AND BACKGROUND

By way of background, the City of Toronto, one of the Parties involved with the Appeal respecting 1745 Albion Road, brought forward a Motion on March 11, 2019, on the consent of all Parties involved in the Hearing, asking for the Hearing scheduled to start on April 25, 2019, be postponed to a block of dates, consisting of five continuous days, later in the year. The Motion put forward reasons for the requested postponement, which will be discussed later in this Decision.

In my Decision dated April 18, 2019, I ruled that while the Witnesses were excused from the Hearing scheduled for April 25, 2019, the lawyers representing the Parties needed to attend the Hearing, so that I could better understand the nature of their request, before taking a decision on how best to proceed forward.

MATTERS IN ISSUE

The relevant questions from my Decision dated April 18, 2019, that need to be addressed in this Decision, are reproduced below:

- a) An update on Witness Statements, with specific reference to completeness of the documentation.
- b) The numbers of expected witnesses, and the reasoning behind the need for a five-day hearing

- c) The prejudice to the Parties if the Hearing can't proceed in a continuous block of five days.
- d) Are the parties open to a TLAB facilitated Mediation and possible Settlement?

JURISDICTION

The TLAB relies on the Rules of Procedure and Practice (the "Rules") to determine Administrative matters.

EVIDENCE

At the hearing held on the morning of April 25, 2019, the Applicants were represented by Mr. Barry Horosko, the City of Toronto (City) was represented by Mr. Michael Mahoney, and Party Nosiru was represented by Mr. Mathew Di Vona. Mr. Horosko said that Ms. Amber Stewart, Counsel for the Applicants, had requested him to attend in her place, because she had attend a hearing out of town

After the Parties introduced themselves, I asked the Parties to explain the nature of the "prejudice" that had been referenced in the original Motion, and respond to the four questions listed above in the "Matters under Consideration" Section.

On the question of the completeness of the Witness Statements, the Parties stated that their respective Witness Statements had been filed, and were complete. On the question of why a five day hearing was needed, and the number of witnesses, Mr. Mahoney stated that the Appeal was "more involved than the typical TLAB matter" because it involved OPA 231, which focused on Economic Health Policies, and the Policies, Designations, and Mapping for Employment Areas. The Parties felt that allocating one day of Hearing for a complex Appeal, would be inadequate, and therefore want multiple Hearing dates, since up to up to six expert witnesses were expected to testify, in the areas of economic development, transportation, and planning. Mr. Mahoney stated that completing the Hearing in a continuous block of days would be "efficient", and said that having a long discontinuation would make it difficult for everybody to "remember" and "concentrate on the evidence". Mr. Horosko, and Mr. DiVona agreed with Mr. Mahoney.

In response to my question about the "prejudice" caused by the hearing not being completed in a continuous block, the Parties indicated that while five continuous hearing dates would be their preference, they "could work", with other arrangements of hearing dates, even if they were not in a continuous block. While the planning witnesses were expected to complete their examinations-in-chief, cross-examinations, and re-examinations within a day each, the Parties felt that the transportation, and economic development witnesses may require less than a day each, resulting in a conservative estimate of five days, for the six witnesses.

The Parties, stated that even if continuous dates could not be obtained, they would prefer dates “that were close to each other”, in the interests of continuity, and completion of the hearing in an efficient manner.

On the matter of their willingness to attend a TLAB facilitated Mediation in an attempt to settle the Matter, both Mr. Di Vona, and Mr. Horosko, indicated their willingness. However, Mr. Mahoney said that he would have to consult with the City’s Legal Department, to see if the City was willing to engage in Settlement discussions, because the “Appeal was about alternate use of land, in a designated Employment District”, which he said, “was a matter of principle for the City”.

I thanked the Parties for attending the hearing, and stated that I would have the TLAB staff canvass hearing dates that were close to each other, even if not in a continuous block. I also advised the Parties that on a go forward basis, I would prefer fulsome, detailed explanations, accompanying any Motion, to help me to comprehensively understand and appreciate the complexity of the matter in front of me , to better enable me, to make decisions.

A few weeks later, Mr. Mahoney sent the TLAB an email, stating that the City would not be participating in Settlement discussions, and provided the same reason as he had provided at the Hearing on April 25, 2019.

ANALYSIS, FINDINGS, REASONS

After listening carefully to the nature of the “prejudice” asserted by the Parties, I concluded that, while the Parties may be inconvenienced, by not being allotted a continuous block of five hearing dates, they would not be “prejudiced”, in the sense of being subjected to an injustice. While I don’t disagree that continuous hearing dates make it easier to remember what happened the day before, the TLAB’s not being able to provide such a privilege does not rise to the level of injustice.

On the Parties’ responses, to my other questions, I acknowledge their responses- namely the Witness Statements are filed, and complete, the reasons for suggesting a five day hearing to complete the matter, and the City’s unwillingness to participate in any Settlement discussion.

I therefore requested the TLAB staff to identify dates on which the Parties, and Witnesses could be present, as well as Hearing rooms were available.

Canvassing the Parties for dates to continue with the hearing resulted in the identification of the following dates-

- 1) Thursday, October 17th, 2019
- 2) Friday, October 18th, 2019
- 3) Tuesday, November 5th, 2019
- 4) Thursday, November 14th, 2019
- 5) Thursday, November 21st, 2019

These dates are deemed to be peremptory, and a Hearing notice may be issued by the TLAB reflecting the same. Since the Parties have completed their disclosure, it is not necessary for the Hearing Notice to refer to other deadlines. The Hearing will resume on October 17, 2019, at the TLAB's Office at Suite 253, 40 Orchard View Blvd., Toronto.

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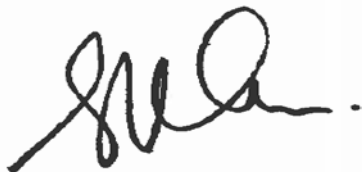
1. The Appeal respecting 1745 Albion Ave will be heard at the TLAB's Offices at Suite 253, 40, Orchard View Blvd., .on the following dates:
 - 1) Thursday, October 17th, 2019
 - 2) Friday, October 18th, 2019
 - 3) Tuesday, November 5th, 2019
 - 4) Thursday, November 14th, 2019
 - 5) Thursday, November 21st, 2019

These dates are peremptory.

2. A Hearing Notice, reflecting the above peremptory Hearing dates, may be sent to the Parties. It is not necessary for the Hearing notice to refer to other deadlines, for reasons discussed earlier in this Decision.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body